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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,913	07/16/2003	Bernard Primiano	D-4009CIP	8964

7590 03/05/2004

John L. James
P. O. Box 2025
Marietta, GA 30061-2025

EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,913

Applicant(s)

PRIMIANO ET AL.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>07-16-2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Priority***

This application filed under former 37 CFR 1.60 lacks the necessary reference to the prior application. A statement reading "This is a continuation-in-part of Application No. 09/999,317, filed October 31, 2001, now U.S. Patent No. 6,615,995." should be entered following the title of the invention or as the first sentence of the specification.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: F, as in Figure 1 (see far right side thereof). A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to because letters A-E do not appear to label the same elements in Figure 1 as they do in Figure 2, i.e., it appears that the location of letters A-E in Figure 1 is incorrect, based on Figure 2 and the specification which states that A-E are fracture lines (shown in Figure 2). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the language of the limitation "the bottom portions of the arms being detachably attached to the front track segment so that the first and second arms with the upper panel are detachable as a unit while the front and rear track segments are mated", as in lines 12-15 of claim 1, is not present in the specification. Thus, it is suggested that this language be inserted into the specification, where appropriate, making sure not to add new matter thereto, i.e., it is suggested that this language be inserted, *verbatum*, into the specification.

Claim Objections

Claim 6 is objected to because "said top edge" in line 2 should be changed to --a top edge--, since the top edge has not been properly set forth. Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 4, 5, 2, 3, and 7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9-12, respectively, of U.S. Patent No. 6,615,995. Although the conflicting claims are not identical, they are not patentably distinct from each other because since the upper panel is attached to the top portions of the arms and since the arms are "detachably attached" to the front track segment, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the panel and the arms *would be detachable as a unit*, as called for in claim 1 of the instant invention, for ease in shipping since the track device, including the arms and panel unit, could be stored in a more compact area.

Claims 6 and 8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9-12 of U.S. Patent No. 6,615,995 in view of Spamer *et al.* '564 (U.S. Patent No. 5,634,564).

The claims differ from claims 9-12 of U.S. Patent No. 6,615,995 in requiring: (a) the lower panel to be slanted (claim 6), and (b) a rear panel upstanding from the base wall of the rear track segment.

Spamer *et al.* '564 teach an elongate display track device comprising a rear track segment including a base wall and side walls and having a rear wall (28) upstanding from the base wall thereof; the device further comprising a front track segment including a front piece (20) attached thereto and having a lower panel (at 26) which is slanted so that

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a top edge thereof is tilted toward the front segment and a bottom edge of the lower panel is tilted away from the front segment.

With respect to (a), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the device of U.S. Patent No. 6,615,995 with the lower panel being slanted, as taught by Spamer *et al.* '564, for in manufacture of the device and ease in viewing of indicia placed thereon.

With respect to (b), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the device of U.S. Patent No. 6,615,995 with a rear panel, as taught by Spamer *et al.* '564, for assisting securement of bottles placed therein, since the rear panel would inhibit the bottles from being pushed rearwardly off of the track segment.

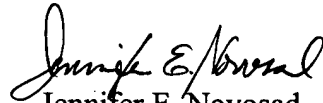
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
March 2, 2004